

REMARKS

This responds to the Office Action dated August 17, 2006.

Claims 1, 8, and 11 are amended. Claims 5, 10, and 15 are cancelled. Claims 1-3, 6-9, 11-13 and 16-17 are now pending in this application.

§102 and §103 Rejection of the Claims

Claims 1-3, 5-13 and 15-17 were rejected under 35 U.S.C. § 102(e) as being anticipated by Casavant et al. (U.S. 2004/0088015). Claims 1-3, 5-13 and 15-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Scheiner et al. (U.S. Patent No. 6,415,183) in view of Min et al. (U.S. Patent No. 5,836,976). The rejections are traversed and reconsideration is respectfully requested. As amended herein, independent claims 1, 8, and 11 recite a device or method for treating ventricular fibrillation that relate to delivering diaphragmatic pacing when ventricular fibrillation is detected only upon three conditions being met: 1) detection of respiratory arrest, 2) if the output capacitor for delivering a ventricular defibrillation shock is not finished charging, and 3) only after one or more shock pulses are unsuccessful in terminating the ventricular fibrillation. Applicant finds no teaching or suggestion for such a device or method in the cited prior art and addresses the arguments made in the Final Office Action with respect to the claims before this amendment below.

With respect to the rejections of claims 1-3, 5-13 and 15-17 under 35 U.S.C. § 102(e) as being anticipated by Casavant, the Examiner has taken the position that the apparatus of Casavant inherently detects respiratory activity in order to determine the rate and level of phrenic nerve stimulation, citing paragraphs 34, 73, and 74. The disclosure at paragraphs 34, 73, and 74, however, only relates to the timing and amplitude of the phrenic nerve stimulation pulses. As far as Applicant can tell, the apparatus of Casavant delivers phrenic nerve stimulation irrespective of any ongoing natural respiratory activity and does not detect such activity. More specifically, the Casavant apparatus does not incorporate a means for detecting the presence of respiratory arrest. In any event, the apparatus of Casavant does not deliver diaphragmatic pacing when ventricular fibrillation is detected in the conditional manner recited by the claims as amended herein or suggest such.

Furthermore, with respect to the rejections of claims 1-3, 5-13 and 15-17 under 35 U.S.C. § 103(a) as being unpatentable over Scheiner et al. (U.S. Patent No. 6,415,183) in view of Min et al. (U.S. Patent No. 5,836,976), or to any obviousness rejections that might be made based upon a combination of those references with Casavant, no combination of the teachings in those references would result in the elements recited by the presently pending claims. That is, no combination of the teachings in cited references teaches the delivery of diaphragmatic pacing when ventricular fibrillation is detected being conditional upon respiratory arrest also being detected, the output capacitor having finished charging, and only after one or more shock pulses are unsuccessful in terminating the ventricular fibrillation. Nor is there any suggestion in the prior art of record to modify the teachings to result in the claimed elements. Withdrawal of the rejections of pending claims 1-3, 6-9, 11-13 and 16-17 on this basis is respectfully requested.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (847) 432-7302 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 17 day of November 2006.

Name

Signature